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PTO/SB/33 (07-05)

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  102.0001-12000	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____		Application Number  10/740,747	Filed  December 19, 2003
First Named Inventor  Gary Karlin Michelson		Art Unit  3772	
Examiner  Michael A. Brown			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>34,383</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;">             Signature            Thomas H. Martin            Typed or printed name            330-877-0700            Telephone number            December 27, 2006            Date         </div> </div> <p><b>NOTE:</b> Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>			
<div style="border: 1px solid black; padding: 5px;"> <input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.         </div>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3772****PATENT**  
Attorney Docket No. 102.0001-12000  
Customer No. 22882**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****RECEIVED  
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In re Application of: )  
Gary Karlin Michelson )  
Serial No.: 10/740,747 )  
Filed: December 19, 2003 )  
For: IMPLANT WITH LOCKING )  
THREAD CONFIGURATION FOR )  
INSERTION BETWEEN BONE )  
STRUCTURES )

Confirmation No.: 4978  
Group Art Unit: 3772  
Examiner: Michael A. Brown

**DEC 27 2006**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In reply to the Final Office Action of October 10, 2006, Applicant submits the following remarks for consideration by the Members of the pre-appeal brief conference.

**I. Brief Background**

The application includes two independent claims, claims 1 and 19, generally drawn to a device and an implant, respectively. Claims 1, 10-15, 17-28, 30 and 31 stand rejected under 35 U.S.C. § 102(b), and claims 16 and 29 stand rejected under 35 U.S.C. § 103(a). The rejection of claims 1, 10-15, 17-28, 30 and 31 under 35 U.S.C. § 102(b), and the rejection of claims 16 and 29 under 35 U.S.C. § 103(a) are the subject of this Request for a Pre-Appeal Conference.

Pre-appeal Brief Request 12-27-06.doc

Application No. 10/740,747  
Pre-Appeal Brief Request For Review dated December 27 2006  
Reply to Final Office Action of October 10, 2006

## II. Clear Errors

(1) The Examiner's rejection of claims 1, 10-15, 17-28, 30 and 31 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,026,373 to Ray ("Ray '373"), and the Examiner's the rejection of claims 16 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Ray '373 in view of U.S. Patent No. 4,961,740 to Ray ("Ray '740") are erroneous because:

(a) support for a device having an elongated body having an outer surface with "a helical thread formed on at least a portion of said outer surface, said thread including at least one deviation adapted to resist backward rotation of said elongated body" according to claim 1 is found on page 12, lines 23-25, of Applicant's specification, which indicates that "threads 53 are locking threads having a series of interjections, the ends of which are blunted and twisted so as to resist unscrewing;"

(b) support for an implant having a body having an exterior surface with "at least one surface projection extending from said exterior surface, said at least one surface projection...being configured to resist backward rotation of said body" according to claim 19 is also found on page 12, lines 23-25, of Applicant's specification, which indicates that "threads 53 are locking threads having a series of interjections, the ends of which are blunted and twisted so as to resist unscrewing;" and

(c) given the support for claims 1 and 19 in Applicant's specification, and the earliest effective filing date of the present application being June 13, 1988, Ray '373 and Ray '740 are not prior art to the present application because they both have an earliest effective filing date October 17, 1988, which is after the earliest effective filing date of the present application.

## III. Conclusion

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Members of the Pre-Appeal Brief Conference reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

Application No. 10/740,747  
Pre-Appeal Brief Request For Review dated December 27 2006  
Reply to Final Office Action of October 10, 2006

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: December 27, 2006

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